

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

In Re: Hubert McCommon Living Trust Agreement)
 District G2, Block 19L, Parcel G23) Shelby County
 Residential Property)
 Tax year 2005)

INITIAL DECISION AND ORDER

Statement of the Case

The Shelby County Board of Equalization ("county board") has valued the subject property for tax purposes as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
\$37,100	\$159,800	\$196,900	\$49,225

On May 13, 2006, the State Board of Equalization ("State Board") received an appeal by the property owner.

The undersigned administrative judge conducted a hearing of this matter on August 1, 2006 in Memphis. In attendance at the hearing were the appellant, Hubert McCommon, and Shelby County Property Assessor's representative Chris Coleman.

Findings of Fact and Conclusions of Law

At issue in this proceeding is the valuation of a two-story house at 7030 Bent Creek Drive in Germantown. Built in 1974 on a 0.37-acre site, this home includes 2,448 square feet of living area and an attached garage. The property is currently rented at a rate of \$1,450 per month.

In tax year 2005, the Assessor increased the appraised value of the subject property from \$152,000 to \$196,900. The property owner made written complaint to the county board pursuant to Tenn. Code Ann. section 67-5-1407. Although the county board's hearing officer recommended a reduced value of \$187,100, Mr. McCommon requested an appearance before the full county board. Alas, upon its review of the matter, the county board decided to affirm the Assessor's original value.

On the State Board appeal form, Mr. McCommon opined that the market value of this property as of the January 1, 2005 reappraisal date was \$161,006. He derived that remarkably precise figure by subtracting from the value indicated by the market analysis of local real estate broker Rick Deegler (\$172,606) the estimated cost of curing the various physical defects described in the attached exhibit (\$11,600).

Of the three properties included in Mr. Coleman's sales comparison approach, two were located on the same street as the subject. He placed most weight on the sale of 6987 Bent

Creek Drive in July, 2004 for \$212,500 “due to similarity in age, location and for having the least net adjustment” (-\$1,700).¹ Yet it was a 2,439-square-foot house at 7014 Bent Creek Road which required the lowest absolute gross adjustment (\$6,950) of its actual sale price in May, 2003 (\$180,000).

Tenn. Code Ann. section 67-5-601(a) provides (in relevant part) that “[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values....”

Since the appellant seeks to change the present³ valuation of the subject property, he has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(1).

Perhaps, if Mr. Deegler had been called to testify at the hearing, he could have satisfactorily explained why he did not consider the recent sales on Bent Creek Drive, or why he chose more distant comparables that were 14-34% larger than the subject. In his absence, however, Mr. Deegler’s market analysis must be treated as hearsay and discounted accordingly.²

But in selecting 6987 Bent Creek Drive as the best of his three comparables, the Assessor’s representative seemingly failed to apprehend that:

The **net** adjustment is an intermediate figure needed only to calculate the final estimate. **This number should not be used as a measure of confidence.** A net adjustment of 2 percent can just as easily arise from gross adjustments of 0 percent and 2 percent (high confidence) as from 100 percent and -98 percent (low confidence). [Emphasis added.]

International Association of Assessing Officers, Property Appraisal and Assessment Administration (1990), p. 171.

Mindful of this principle, the administrative judge deems the adjusted sale price of 7014 Bent Creek Drive (\$186,950) to be the best evidence of the subject property’s value on January 1, 2005. Ironically, this evidence appears to validate the \$187,100 value previously recommended by the county board’s appointed hearing officer.

Deduction of the estimated cost to cure the deferred maintenance items listed in the attachment from the value derived by the sales comparison approach would not be appropriate; for that methodology would beg the question of whether the subject property as a whole is in worse condition than the 30+-year-old comparables. Such an assumption is not warranted by the proof.

¹Although 6987 Bent Creek Drive included a swimming pool, that house also had 89 less square feet of living area and a carport instead of a garage.

²Hearsay is defined in Tenn. R. Evid. 801(c) as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.”

Order

It is, therefore, ORDERED that the following values be adopted for tax year 2005:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
\$37,100	\$150,000	\$187,100	\$46,775

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 18th day of August, 2006.



PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Hubert McCommon
Tameaka Stanton-Riley, Appeals Manager, Shelby County Assessor's Office

EXHIBIT "C"

**RELEVANT FACTS ESSENTIAL TO
DETERMINING THE TRUE MARKET VALUE
OF PROPERTY LOCATED AT
7030 BENT CREEK, GERMANTOWN, TN**

- **The sewage line stops up frequently due to tree roots. Unfortunately, the line goes under the driveway and it will have to be replaced also. The drive has been patched and has many cracks and should be replaced anyway. The estimated cost is \$3,200.**
- **The carpet throughout the house needs replacing. The estimated cost is \$4,600.**
- **The backyard fence needs replacing at an estimated cost of \$2,600.**
- **The trees needs to be pruned and one removed. Estimated cost \$1,200.**
- **All total, these costs are \$11,600, a significant factor in determining true market value.**